Supreme Court, U.S.
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In The

Supreme Court of the United States

BARRY CEMINCHUK

Petitioner

vs.

BARACK H. OBAMA
President of the United States

Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. The real question for this court is whether the Supreme Court of the United States is part of the scheme to protect politicians and a political party, and to protect judges that protect politicians and a political party, with judges rigging a court case by ignoring precedents (many on-point cases, irreparable harm, etc.) and relevant points (my political party, etc.) with the issue of standing to protect stealing, corruption, election rigging (18 United States Code (U.S.C.), Elections Chapter crimes, Section 600 and other laws), Bribery (Constitution Article II, Section IV), money funnelling and kickback schemes using race and gender preferences/set-asides to rig government jobs and contracts (worth at least ten's of billions of dollars per year) so corrupt politicians and a political party can get votes and support and funnel money to, and get kickbacks from, feminist and ethnic special interest groups and beneficiaries (which is the real reason, not the pretext)?

2. Whether people who had jobs and businesses stolen from them, and those deterred from applying/bidding, by the race and gender preference/set-aside schemes, which are illegal and

unconstitutional and known, are to be compensated, or if this is some third world country where people are stolen from and so what, or in other words whether this court is part of the steal from Asian, Mid-Eastern and White people and men crowd?

3. In the Appeals Court the issue arose that when courts have been corrupted for political purposes, that is when politicians and a political party (i.e. the Democratic Party) choose judges to protect their stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes, which is also a conspiracy to rig court cases and a conspiracy to protect the actions and protect election rigging and subvert the Constitution, and even though the judges may be too unsophisticated or too dumb or both to understand that they are actually pawns being used by politicians (which is their problem), and judges have been bought (person is given government job (judgeship), payback is person protects politicians by rigging cases), and judgeships are being sold to special interest groups for votes and contributions, whether those judges should be disqualified under 28 U.S.C. § 455 (a) from cases involving the actions that they were given the judgeship to protect, or in other words do judges work for the people or politicians

and a political party and can politicians choose judges to protect their election rigging, etc.?

4. If these actions are going to continue, then government jobs and contracts are political pawns and all political parties are to have access to them, will the court order that the Plaintiff get the same benefits (from the Complaint; half the race and gender set-asides and a payment for Goodwill for past benefits, $100 Million (which is low considering the large $ involved)), for the political party he will start?

5. When is this court going to wake up and realize what is really going on, that corrupt politicians and thieves are trying to use the courts to protect their corruption, etc. and to legitimize their corruption, and to hide behind while they steal and rig elections?

6. For the preference mongers on this court (i.e. those who want to steal from Asian, Mid-Eastern and White people and men, and those who say discrimination is bad then want to discriminate against people, and those who want to race and gender "norm" (adjust scores to pass over people and give jobs to lowered standard people)), will you give

up your job, or are you like the silly, useless people who want to steal but do not want it done to you, or worse, too dumb to think that far?

7. Is Barry Ceminchuk (i.e. the Plaintiff) going to continue to be defrauded by paying court filing fees expecting a fair trial, and barred from court by judge pals rigging court cases to protect stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes of politicians, which is the courts effectively barring the Plaintiff from court (blocked cases by ignoring precedents and issues with standing is the same as barring)?

8. All of which leads to the question of whether mankind can govern themselves?

PARTIES TO THE PROCEEDING

Plaintiffs are Barry Ceminchuk and all the victims of these actions. Defendant is the President as he is responsible for all government departments, agencies, etc. and Commander in Chief, involved with these actions.

CORPORATE DISCLOSURE STATEMENT

Not applicable.

TABLE OF CONTENTS

Questions Presented i

Parties v

Corporate Disclosure Statement v

Table of Cited Authorities

Table of Cases viii

Constitutional Provisions and Statutes . . ix

Citations of the Opinions and Orders Entered By Courts 1

Jurisdiction

Date of order sought to be reviewed . . . 1

Date of order respecting rehearing . . . 2

Statutory provision to confer jurisdiction . . 2

Constitutional and Statutory Provisions Involved . 2

Statement of the Case

A. Overview 2

B. Statement of Facts 4

C. Discussion of Questions Presented . . . 26

Federal Jurisdiction in District Court 47

Reasons For Granting the Writ, This Is A Question of Supreme Importance and the Court's Supervisory Power is Required 48

Conclusion 50

Appendix

The Court Orders 1
Appeal Court Mandate 1
Appeals Court Rehearing 5
Appeals Court Order 7
District Court Order 10
Constitutional Provisions and Statutes . . 18
Statutes Involved 19

TABLE OF CITED AUTHORITIES

TABLE OF CASES

Adarand Const., Inc. v. Pena 115 S.Ct. 2097 . . . 45
Ayon v Sampson 547 F.2d 446, 451 30
Bulloch v. United States 763 F.2d 1115, 1121 . . 39
Byrd vs. Rubin, District Court for the Southwestern District of Louisiana, 1997 30
Caperton Et Al. v A.T. Massey Coal Co. Inc. Et Al., Supreme Court, 556 U.S. ____ (2009) . . 36
** *Clarke v Sec. Ind. Assoc. 479 U.S. 388* . . 9,11,27
Clinton v. City of New York 524 U.S. 417 24
Connick v Myers 103 S.Ct. 1684, 1691 16
Conley v Gibson 355 U.S. 41, 45-46 16
Com. of Pa. v Local Union 542, Int'l. Union of Operating Engineers 469 F.S. 329 14
Data Processing Service v Camp 397 U.S. 150 . . 9
Dynalantic Corp v Dept of Def. 115 F.3d 1012 . . 14
** *Equal Employment Opportunity v. United Air Lines 560 F.2d 224, 232* 7,13,27
Firefighters v. Cleveland 478 U.S. 501, 529 . . . 24
** *Florida General Contractors v. Jacksonville 508 U.S. 656, 666* 6,8,11,13,14,15,27
** *Gratz v Bollinger 123 S.Ct 2411* . . . 11,15,16,19

Lujan v. National Wildlife Fed. 497 U.S. 871 . . . 6
** *Lujan v. Def. of Wildlife 504 U.S. 555* . . 7,8,10,17
Monterey Mech. Co. v Wilson 125 F.3d 702,715 . 30
O'Donnell Con. v Dist. of Col. 963 F.2d 420 . 9,16,27
** *Parents involved in community schools v Seattle School District No.1 and Crystal D. Meredith, ... v Jefferson County Board of Education 127 S.Ct. 2738* 14
Ricci Et Al. V. Destefano Et Al., Supreme Court, No. 07-1428, June 29, 2009 . . 17,32,42,46,50
Richmond v Croson 488 U.S. 469, 499 30
Salinas v. U.S. 118 S.Ct. 469 23,41
** *Saunders v White 191 FS.2d 95, 137* . . 13,20,32
Taxman v. Board of Education of Township of Piscataway 91 F.3d 1547 30
U.S. v. Hays 515 U.S. 737 12,13
U.S. v. Hood 343 U.S. 148, 151 25
U.S. v Virginia 116 S.Ct. 2264 12

CONSTITUTIONAL PROVISIONS

Articles of Confederation 18
Bribery 4,23,26,27,33,34,46,47,49
Northwest Ordinance 20

STATUTES

18 U.S.C. Section 2 41
18 U.S.C. Section 599 3,31
18 U.S.C. Section 600 3,26,31,46
18 U.S.C. Section 1961 et seq. (RICO) 18,23
28 U.S.C. Section 455 33,37
42 U.S.C. Section 1987 31
42 U.S.C. Section 1988 30
42 U.S.C. Section 2000e-2(j) 29,43
California Election, Section 18520 23

CITATIONS OF THE OPINIONS AND ORDERS ENTERED BY COURTS

United States District Court For the District of Columbia, Memorandum And Dismissal Order, July 17, 2009.

United States Court of Appeals For the District Of Columbia Circuit, Order, December 3, 2009, denying motion to disqualify democratic party appointed judges, and granting the motion for summary affirmance.

United States Court of Appeals For the District Of Columbia Circuit, Order, February 16, 2010, denying Rehearing.

United States Court of Appeals For the District Of Columbia Circuit, Mandate, March 12 2010.

JURISDICTION

The order sought to be reviewed is the Order of December 3, 2009.

The order denying Rehearing is the Order of February 16, 2010.

The statutory provision conferring on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See cited authorities, and text is in the Appendix.

STATEMENT OF THE CASE

A. OVERVIEW

The facts material to consideration of the questions presented are, this case is a claim for (from the Complaint):

- victims of race and gender preferences with government jobs and contracts (set-asides), all who lost jobs and/or contracts and those "deterred" from applying/bidding, victims should be compensated, money has been taken from decent hardworking

people, and

- also a claim for election rigging scams as outlawed in the federal criminal code, 18 United States Code (U.S.C.), Elections Chapter, sections 599 and 600, including promising (directly or indirectly (code words, actually having preferences)) and/or promoting race and gender preferences which is promising jobs and contracts, and

- if these actions are not going to be stopped then the Plaintiff requests that the government make government jobs and contracts available for the Plaintiff so he can set up a political party and get the same benefits (government jobs and contracts for support, votes and contributions), half the race and gender set-asides and a payment for Goodwill for past benefits, $100 Million (which is low considering the large $ involved, the Plaintiff's unofficial information is that set-asides are in the ten's of Billions per year).

In the Appeals Court the Appellant/Plaintiff submitted a Motion To Disqualify Democratic Party Appointed Judges raising the issue of the courts being corrupted for political and election rigging

purposes by the Democratic Party stacking the courts with judges that will protect their stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes, which include the actions in this case, and whether such judges should be disqualified from cases in which they were chosen to protect. The many points in the motion were not disputed.

The District Court dismissed the case and the Court Of Appeals granted the motion for summary affirmance and denied the motion to disqualify democratic party appointed judges and denied the petition for rehearing.

B. STATEMENT OF FACTS

In the Complaint the Plaintiff mentioned his extensive experience in the Information Technology industry and research and development contracts and "The Plaintiff is not dumb enough to spend the time and money trying to get something that is not available". An Affidavit was also provided stating "4. I am ready and able to pursue these." and "5. I am considering starting a political party and if such actions are not stopped will expect the same

benefits." And, again, if these actions are going to continue the Plaintiff should have access to government jobs and contracts to rig for votes and contributions for the political party he will start.

Following are excerpts from court submissions with standing, and that are being ignored:

AND AGAIN, THERE ARE OTHER STANDING ISSUES NOT BEING ADDRESSED:

- ELECTION RIGGING, CRIMINAL CODE, CORRUPTION, MONEY FUNNELLING, STEALING AND THE PRETEXT POINT.

- MY POLITICAL PARTY, which clearly confers standing.

- OTHER POINTS, public interest, many other cases, government contracts and jobs are not political pawns.

- Intentional infliction of emotional distress.

- Research and development ideas were mentioned, along with discussion of some ideas.

- Specific contracts were mentioned in the submissions, MacDill Air Force Base and NASA.

- and "'practice of racial discrimination pervasively applied on a classwide basis.'"

- The District Court also did not address the issue that these actions should have been cleaned up and the Plaintiff should not have to do any of this. And the victims should be determined and compensated at the expense of the government.

There are many case precedents being ignored, including:

From the Complaint, heading STANDING the main points that address the issue:

17. "To establish standing, therefore, a party challenging a set-aside program like Jacksonville's need only demonstrate that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal basis." *Florida General Contractors v. Jacksonville (508 U.S. 656, 666 and 657).* The Plaintiff is able and ready (see Affidavit). Also, "whether one of the respondent's members has been, or is threatened to be, adversely affected or aggrieved by Government action" *(Lujan v. National Wildlife Federation 497 U.S. 871, 889).*

18. Also, "The courts have long recognized that the failure of an individual to apply for a

position from which he would be discriminatorily excluded does not defeat his claim.", and "In any event, Congress did not intend Title VII remedies to be available only to those knowledgeable enough and militant enough to have demanded and been refused what was not available". *(Equal Employment Opportunity v. United Air Lines, 560 F.2d 224, 232).* The Plaintiff is not dumb enough to spend the time and money trying to get something that is not available, the Plaintiff has also done corporate planning.

19. The Plaintiff is also considering starting a political party and has a website for such if required.

From the Petition for Rehearing:

4. The Order says "The district court properly dismissed this action for lack of standing, because appellant did not allege an injury in fact caused by the appellee's conduct and redressable by the court, which are the "irreducible constitutional minimum" requirements for standing. *Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).*"

5. I AGAIN point out that THE SAME

CITATION *(Lujan v. Defenders of Wildlife, 504 U.S. 555, 560)* is mentioned and explained in detail in the *Jacksonville case at 508 U.S. @ page 663,* heading "Point III", and leads to the courts conclusion on page 666 starting with "Singly and collectively, ..." and "The injury in fact in an equal protection case of this variety is the denial of equal treatment resulting the imposition of the barrier, not the ultimate inability to obtain the benefit." ..."And in the context of a challenge to a set-aside program, the "injury in fact" is the inability to compete on an equal footing in the bidding process, not the loss of a contract." ... "**TO ESTABLISH STANDING, THEREFORE**, (bold and capitals added by me) a party challenging a set-aside program like Jacksonville's need only demonstrate that it is **ABLE AND READY** (bold and capitals added by me) to bid on contracts and that a discriminatory policy prevents it from doing so on an equal basis." *(Florida General Contractors v. Jacksonville 508 U.S. 656, 666).* THIS IS THE APPROPRIATE STANDARD FOR STANDING WITH THE DISCRIMINATORY CLASSIFICATION. And, the many other cases mentioned. The discriminatory policy is the admitted set-asides and preferences. How many times do I have to say this?

7. The Appeals Court Order also says "Appellant refers only generally to government jobs and contracts and to his experience with Information Technology and preparing bids for contracts.". The court does not seem to understand, or is trying to ignore, the point that THE EXPERIENCE SHOWS MY SKILLS, KNOWLEDGE AND ABILITIES, WHICH SHOWS ABLE AND READY (as my Affidavit said). With general, I also mentioned SPECIFIC research and development and SPECIFIC contracts and irreparable harm (again, "Plus irreparable harm is being done to the plaintiff, see *O'Donnell Const. Co. v District of Columbia (963 F.2d 420)* at pages 428 and 429, right hand column, point [9].").

8. And again, *Clarke v Securities Industry Association (479 U.S. 388)* where a company that was in the same business that was affected by a decision had standing, "suffering injury from the competition" *(479 U.S. 388 @ 397)*, referring to *Data Processing Service v Camp (397 U.S. 150). Clarke, Footnote 13 on page 397 - 398, on page 398* says "We held that data processing companies were sufficiently injured by the competition that the Comptroller had authorized to create a case or controversy.".

The Plaintiff understands that lawyers probably will not know this, but as discussed in the Washington Times Editorial of May 4, 2010, "Cut the Small Business Administration, Affirmative-action agency wastes billions of taxpayer dollars", that says set-aside recipients "receive preferential treatment and even sole-source access to lucrative federal contracts", besides the twisting of goals to quotas and preferences, this is very valuable to people who know how to bid on contracts and put together bids. The Plaintiff is convinced he could build a significant business if he had access to sole-source contracts.

Other quotes from the submissions:

The Lujan and MacArthur cases discussed in the court order and the court saying "nebulous allegations of hypothetical injuries based on federal policies" fail to meet this standard." are based on issues and facts in the Lujan and MacArthur cases. Again, this is ridiculous, grasping at straws to block a case. The Lujan case involves some one who "intends to return to Sri Lanka in the future and hope(s) to be more fortunate in spotting the endangered elephant and leopard." (Lujan 504 U.S. at

563) and the MacArthur case involves records kept by the FBI, where, from the case "president of foundation challenged Federal Bureau of Investigation's (FBI) retention of information about him and foundation as violation of Privacy Act and First Amendment.". These are indeed nebulous and questionable claims. The Appellant's claims and facts and standing issues are completely different, again, addressed in a specific case discussing standing (Jacksonville 508 U.S. 656, 663 - 666). Standing is also addressed in Gratz v Bollinger (123 S.Ct 2411, 2422 - 2423) where "intention is relevant to standing", "able and ready" and "denied him the opportunity to compete". . . . The Appellant could say more about the Lujan and MacArthur cases but the above is sufficient.

With the *Clarke* case, if you take the Appellee's words "had established constitutional standing as the trade association represented persons directly affected by the regulations at issue", obviously all it takes to have standing is to be "directly affected", that is, be in the business and affected, the Appellant has spent many years in the business of Information Technology and what used to be called "Data Processing". The Appellant explained

this many times, over and over. Points like this are why the Appellant says things over and over.

Also the *Virginia Military Institute* case involved a prospective student *(U.S. v Virginia 116 S.Ct. 2264).*

And, with *U.S. v. Hays* this was covered in the Surreply in the District Court:

The Defendant mentions ""generalized grievances" against any policies of affirmative action (like those Plaintiff attempts to raise) do not provide standing. *U.S. v. Hays, 515 U.S. 737, 743-44 (1995).*". ANSWER: The Plaintiff has shown specific areas applicable (above) and in the Complaint. The Plaintiff points out that the Hays case is a racial gerrymandering case brought by someone who lives outside the gerrymandered district, which is a different situation, in this case set-asides for example are across the country and across industries and even include subcontracts. Also, on page 745 the Hays case says unless specific evidence is provided to support the inference of being subjected to the racial classification (gerrymandering in this instance) the plaintiff would only be asserting a generalized

grievance. The Plaintiff has provided specific evidence, and explained the points many times. And, again the *Fla. Contractors v Jacksonville case (508 U.S. 656)* is a case specifically discussing standing and injury in fact with set-asides. The 508 U.S. 656 case is also mentioned on page 745 of the Hays case.

There are also precedents that discuss "deterred" and "dissuaded", and from the *United Air Lines* case (Complaint p.18) @ 234 ("or were dissuaded from applying").

Also, "Thus, for a plaintiff seeking prospective relief to suffer an injury for purposes of standing, he only needs to demonstrate that he is ready and able to apply (or be considered) for a benefit and that a discriminatory policy prevents him from doing so on an equal basis." *Saunders v White (191 FS.2d 95 @ 102).* This addresses the issue.

Plus, "All that was necessary was that the plaintiff wished to be considered for the position." *(Florida General Contractors v. Jacksonville 508 U.S. 656, 664).* Plus "we emphasized that the plaintiffs' injury was the "obstacle to [their] candidacy," *457 U.S., at 962* (emphasis added); we did not require any

allegation that the plaintiffs would actually have been elected but for the prohibition." F*lorida General Contractors v. Jacksonville (508 U.S. 656, 664-665).* Also, "the complaint did not refer to any specific contract or subcontract" at page 659.

Also, "One form of injury under the Equal protection Clause is being forced to compete in a race based system that may prejudice the plaintiff." *(Parents involved in community schools v Seattle School Dist. No.1 and Crystal D. Meredith, ... v Jefferson County Board of Ed. 127 S.Ct. 2738, 2738).*

Also, "Persons deterred from applying for employment because of employer's reputation for discriminatory activity, where that reputation derives from actual discrimination, can state a cause of action and obtain relief *(Com. of Pa. v Local Union 542, Int'l. Union of Oper. Engineers 469 F.S. 329).*

Also, "Rather Dynalantic's injury is its lack of opportunity to compete for Defense Department contracts" and "causes a not insignificant portion of its potential business opportunities to be foreclosed to it clearly makes out an injury." *(Dynalantic Corp v Dept of Defense 115 F.3d 1012, 1016).* Also see point

III on page 1015. This is the same point, a similar error was made.

Standing is also addressed in detail in *Gratz v Bollinger (123 S.Ct 2411, 2422 - 2423)* where "intention is relevant to standing", "able and ready" and "denied him the opportunity to compete" and "But whether Hamacher "actually applied" for admission as a transfer student is not determinative of his ability to seek injunctive relief in this case." Notice whether applied is not determinative.

The *Gratz* case also says "It is well established that intent may be relevant to standing in an Equal Protection challenge. ... Likewise, in *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville, 508 U.S. 656, ...* we explained that "[t]he 'injury in fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, ... And in the context of a challenge to a set-aside program, the 'injury in fact' is the inability to compete on an equal footing in the bidding process, not the loss of contract." Id., at 666. We concluded that in the face of such a barrier, "[t]o establish standing, a party challenging a set-aside program like

Jacksonville's need only demonstrate that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal basis.".

The *Gratz* case says applied is not determinative and points to the Jacksonville case and then "able and ready". The Appellant has said the same thing over and over. Clear error.

Also, government hiring and contracting is clearly in the public interest (Meritorious performance rather than political service, is a public concern *(Connick v Myers 103 S.Ct. 1684, 1691)*, and "would serve the public's interest in maintaining a system of laws free of unconstitutional racial classifications" *(O'Donnell Const. Co. v District of Columbia 963 F.2d 420, 429)*.

Some quotes, "a complaint shall not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *(v Gibson 355 U.S. 41, 45-46)* and again, "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice,

for on a motion to dismiss we "presume that general allegations embrace those specific facts that are necessary to support them."" *(Lujan v. Defenders of Wildlife 504 U.S. 555, 561).*

The District Court also did not consider the issues (pretext, summarily affirmed, etc.) from the recent case, *Supreme Court of the United States, Ricci Et Al. V. Destefano Et Al., No. 07-1428, June 29, 2009.* Relevant quotes are: "Therefore, the decision below, which sustained the entry of summary judgment for respondents, cannot be affirmed unless no reasonable jury could find that the City's asserted reason for scrapping its test—concern about disparate-impact liability—was a pretext and that the City's real reason was illegitimate, namely, the desire to placate a politically important racial constituency." (*Justice Alito, concurring opinion page 3, page 44 of pdf document*). Also, "The District Court threw out their case on summary judgment, even though that court all but conceded that a jury could find that the City's asserted justification was pretextual. The Court of Appeals then summarily affirmed that decision. The dissent grants that petitioners' situation is "unfortunate" and that they "understandably attract

this Court's sympathy." Post, at 1, 39. But "sympathy" is not what petitioners have a right to demand. What they have a right to demand is evenhanded enforcement of the law—of Title VII's prohibition against discrimination based on race. And that is what, until today's decision, has been denied them." *(Justice Alito, in the last paragraph of his opinion page 13, page 54 of pdf document).* Also, "Petitioners are entitled to summary judgment on their Title VII claim" *page 34, page 38 of pdf document, end of Opinion of the Court.*

Also the Articles of Confederation (the precursor of the Constitution), Article XI. Canada, asceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of the Union. And Article IV, Section 1 ... and shall enjoy therein all the privileges of trade and commerce. This is not disputed by the Defendant. Also, the RICO statutes (18 U.S.C. Section 1961 et seq.) mention "interstate or foreign commerce" (18 U.S.C. Section 1962). So either the Articles of Confederation and/or the RICO statutes are applicable.

Also, "It is a singular policy ... applied on a

classwide basis" *(Gratz v Bollinger 123 S.Ct 2411 @ 2426)*, and "and in view of ... the potential injury he faced at the time of certification, demonstrates that he may maintain the action" *(@ 2415)* and "'practice of racial discrimination pervasively applied on a classwide basis.'" *(@ 2424)* and "They sought to certify a class consisting of all individuals who were not members of an underrepresented minority group who either had applied for admission to the LSA and been rejected or who intended to apply for admission to the LSA, for all academic years from 1995 forward. Id at 35-36. The District Court determined that the proposed class satisfied the requirements of the Federal Rules of Civil procedure, including the requirements of numerosity, commonality, and typicality. ... Finally, the District Court concluded that petitioners' claim was appropriate for class treatment because the University's "'practice of racial discrimination pervasively applied on a classwide basis.'"" *(@ 2424)*.

In the court submissions the Plaintiff also mentioned specific contracts and discussed research and development ideas. The Plaintiff also mentions he graduated from college (Northern Alberta Institute of Technology) in Data Processing.

Again, the many other points in the submissions are being ignored and with this case my political party which clearly confers standing.

The District Court also said "been harmed by the affirmative action policies of the United States", the Plaintiff pointed out that with government, affirmative action is to be trivial, benign actions that do not affect the decision. Contracts are to be tendered and hiring is to be based on merit. Idiot/thieves try to twist it to steal from people. Also, the Plaintiff said "What part of "it is unconstitutional in every application and under every set of conceivable circumstances", from Saunders v White (191 FS.2d 95 @ 137 F.55), does the Defendant not understand?"

There is also the issue that contracts are not to be interfered with. See Northwest Ordinance, text in Appendix, Constitutional provisions.

The Plaintiff also points out that the Democrats just blindly and arbitrarily push quotas, which is stealing from Asian, Mid-Eastern and White people and men, which is absurd. They push contract set-

asides and job preferences across the country and industries.

And to show what is really going on, from the book entitled Creating Equal, My Fight Against Race Preferences, by Ward Connerly, page 162, "As CCRI inched onto their radar screen, most Democratic Party bigwigs, in the words of state party chairman Bill Press, decided that it was a potential "Armageddon". They were locked into support for the affirmative action status quo because it was the key to maintaining the stranglehold on the black vote." CCRI is the California Civil Rights Initiative, Proposition 209. In other words, political pawns used by politicians and a political party to get votes and contributions.

The Plaintiff has also heard a speech by Mr. Connerly where he mentioned these preferences are used by politicians.

And with stealing education places from Asian, Mid-Eastern and White children (displace them and replace them with Latino and black children), a news story said "The best-known example of efforts to undermine Prop. 209's enforcement is the University

of California's refiguring of its admissions process in ways that will boost black and Hispanic enrollment. Connerly, a UC regent, told a meeting last summer, "The Latino Caucus [of the state legislature] is very blatant. They told us, 'Either you get our people in or we will cut your budget.'" The university downgraded the general aptitude SAT I test (which used to be called the Scholastic Aptitude Test) in admissions." This is politicians coercing civil servants to steal from people and to promote quotas.

The Plaintiff has also read a comment on preferences that pointed out the absurdity of putting people in situations they cannot handle and do not have the skills to handle. This is also dangerous.

And, the politicians are really corrupt politicians who will sell what could be your job to feminist and ethnic groups for votes and kickbacks. People's jobs are not to be used by corrupt politicians as a political pawn for their personal and political and financial benefit or for election rigging and kickback schemes.

In other words, the real source is these are being used as political pawns by politicians and a political party to get votes and contributions. This is

politicians stealing from people. And, California Election law says:

Section 18520. A person shall not directly or through another person give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to:

(a) Refrain from voting.

(b) Vote for any particular person.

(c) Refrain from voting for any particular person.

A violation of any of the provisions of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

And there are the RICO (Racketeering Influenced Corrupt Organizations) statutes, 18 U.S.C. Section 1961 et seq., and they include "bribery" and, as explained in *Salinas v. United States (118 S.Ct. 469) on page 476,* "any act ... involving bribery which is chargeable under state law ...". An example of a state law would be the California Election law above.

Plus, not mentioned previously "("The court routinely recognizes probable economic injury resulting from [government action] that alter competitive conditions are sufficient to satisfy the [Article III "injury-in-fact requirement]. ... It follows logically that any ... petitioner who is likely to suffer economic injury as a result of [governmental action] that changes market conditions satisfies this part of the standing test")." *(Clinton v. City of New York 524 U.S. 417, 433).*

A courts approval of a consent decree between some of the parties therefore cannot dispose of the valid claims of nonconsenting intervenors; if properly raised these claims may be litigated by the intervenor.... and, of course, a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree. *(Firefighters v. Cleveland 478 U.S. 501, 529).* Also, section 108 of the 1991 Civil Rights Act which says people are to be warned and allowed to object and not consent (due process).

The Plaintiff also points out that the Defendant and the U.S. Attorneys are looking the other way with an election rigging crime. This is inexcusable,

these people work for the people, not politicians and not some political party that is rigging elections. The Department of Justice is not to be political or protect election rigging.

Also, "Certainly it was not unreal for Congress to believe that the sale of influence in anticipation of jobs was equally damaging to the proper operation of the federal service and take steps to prevent it. It did so in this Act. ... This Act penalized corruption." *(U.S. v. Hood 343 U.S. 148, 151).*

As the Appellant/Plaintiff said in the Petition for Rehearing "12. And, with the obvious intellect I am dealing with here, I will not even try to explain merit hiring and tendering of contracts and Breach of Trust. Or that these people are stealing from decent hardworking people. These concepts are too complicated for some people."

With the service of the Complaint on the U.S. Attorney issue, what actually happened is the Plaintiff sent multiple copies and the U.S. Attorney is trying to ignore the fact that another copy with the Summons was received. The Plaintiff repeatedly, by letter, email and court submission tried to get the

U.S. Attorney to answer the question whether the other copy containing the Summons was received. The U.S. Attorney did not answer the question, instead trying to focus on the copy sent to the Civil Process Clerk. This really is not important, it is a secondary issue but the Plaintiff just wanted to point out the real story.

C. DISCUSSION OF QUESTIONS PRESENTED

1. The real question for this court is whether the Supreme Court of the United States is part of the scheme to protect politicians and a political party, and to protect judges that protect politicians and a political party, with judges rigging a court case by ignoring precedents (many on-point cases, irreparable harm, etc.) and relevant points (my political party, etc.) with the issue of standing to protect stealing, corruption, election rigging (18 United States Code (U.S.C.), Elections Chapter crimes, Section 600 and other laws), Bribery (Constitution Article II, Section IV), money funnelling and kickback schemes using race and gender preferences/set-asides to rig government jobs and contracts (worth at least ten's of billions of dollars per year) so corrupt politicians and a political party can get votes and support and funnel

money to, and get kickbacks from, feminist and ethnic special interest groups and beneficiaries (which is the real reason, not the pretext)?

This is absurd. What is obviously going on here is judges are blocking a case to protect politician's stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes. This is beyond error, the Appellant/Plaintiff provided sufficient evidence and multiple case precedents (Fla. Gen. Contractors 508 U.S. 666, United, Clarke, O'Donnell (irreparable harm), and many other cases) and other legal issues with standing (what has become my main point, my political party, etc), see Heading STATEMENT OF FACTS above, and these were pointed out many times, and they are being deliberately ignored and are not even addressed by the court. They are deliberately ignoring the points to block a case to protect the politicians and the actions in the case. Inexcusable, the courts are to be fair and honest and not protect corrupt, election rigging politicians. And, judges work for the people not politicians or a political party. This should not have to be said. And, corrupt politicians try to hide behind government attorneys and hope a judge will protect them.

And this is typical, people are stolen from and then jerked around with ridiculous drivel to block their cases and compensation. These actions should be cleaned up and victims compensated at the expense of the government. This case should be like the asbestos cases, clean this up and compensate people.

And, do not get angry at me for having the brains to see what is really going on and the guts to say it. Throughout history, tyrants and court jesters and front-men (and women) have gotten angry with those who are not fooled by their drivel and stand up and speak out.

This is a serious, big time issue, with big time serious implications. If the courts protect politician's corruption, election rigging, etc. then the courts are lackeys of politicians and political operatives.

To allow these actions to continue is to encourage corrupt politicians to run their schemes, and the steal from Asian, Mid-Eastern and White people and men crowd from feminist and ethnic special interest groups trying to steal for themselves

to keep playing their games to steal. And to encourage others to escalate election rigging actions, if some one gets away with election rigging, then any one can do anything.

Just so there is no misunderstanding about what is being discussed here, and especially for the simpletons who can only think of one simple point, there is a game being played to steal from people using race and gender preferences, games like a patchwork of contract set-asides across the country, industries and even with state governments. This is clear, intentional, known discrimination and in the court submissions this is an undisputed admitted policy by the Respondent/Defendant. And, it is an absurd race and gender balancing and proportionality game trying to ignore as said in the Complaint, paragraph 5, 42 United States Code, Section 2000e-2(j), Preferential treatment not to be granted on account of existing number or percentage imbalance.

Some quotes, "All persons, of either sex and any ethnicity, are entitled to equal protection of the law. That principle, and only that principle, guarantees individuals that their ethnicity or sex will not turn

into legal disadvantages as the political power of one or another group waxes or wanes." *Monterey Mech. Co. v Wilson (125 F.3d 702, 715)*, and *Ayon v Sampson (547 F.2d 446, 451)* which clearly says race and gender are not to be used as a consideration and "not to establish preferential hiring practices in favor of those individuals who were previously the subjects of discrimination." and *Byrd vs Rubin, District Court for the SW District of Louisiana, April 1997* that ruled the IRS's "affirmative action" policies had encouraged "institutional discrimination against white male employees", and layoffs impose the entire burden ... on individuals, often resulting in serious disruption of their lives, and such burden is too intrusive (*Taxman v. Board of Education of Township of Piscataway 91 F.3d 1547*) and tried before and not allowed "would give governments a license to create a patchwork of racial preferences based on statistical generalizations about any particular endeavor" *(Richmond v Croson 488 U.S. 469, 499)* and, an article entitled "Jury throws book at library board", February 12, 2002, Washington Times, says: "It seems that there is an assumption out there that it's OK to discriminate against white people." They are supposed to know no reverse discrimination. And 42 U.S.C. Section 1988 says "all persons". And, tort of intentional interference with prospective contractual

relations.

Also, as mentioned in the Complaint, p.11, these actions exacerbate racial hatred. And they do.

Also, there are many criminal code sections mentioned in the Complaint, p.5, especially 18 U.S.C. Sections 599 and 600 (also in the USCS L.Ed books the notes to 42 U.S.C. Section 1987, federal civil rights law, also point to Section 600 and other sections of the criminal code). Also, 18 U.S.C. Sections 599, 600 are mentioned on pages 273 and 274 of the HOUSE ETHICS MANUAL, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT, 110TH Congress, 2d Session.

The Plaintiff mentions the inscription on the entrance of the New York City Supreme Court building, 60 Centre Street, Manhattan, says "THE TRUE ADMINISTRATION OF JUSTICE IS THE FIRMEST PILLAR OF GOOD GOVERNMENT". Wise words.

2. Whether people who had jobs and businesses stolen from them, and those deterred from applying/bidding, by the race and gender

preference/set-aside schemes, which are illegal and unconstitutional and known, are to be compensated, or if this is some third world country where people are stolen from and so what, or in other words whether this court is part of the steal from Asian, Mid-Eastern and White people and men crowd?

On point case precedents and facts are being ignored obviously so the election rigging, money funnelling (of Billions of dollars) and stealing can continue. The Appellant/Plaintiff knows the actions are unconstitutional, and what these people try is a "pretext" *(Ricci case)*. The Respondent/Defendant is also trying to ignore the *Saunders v White (191 FS.2d 95 @ 137 F.55)* case that says "it is unconstitutional in every application and under every set of conceivable circumstances", and continue these actions, and avoid compensating the victims. Again, these actions should be cleaned up and victims compensated at the expense of the government.

What are these people, idiots too dumb to realize they are stealing from decent hardworking people, or thieves who just want to steal and not compensate people? Who do these people think they are? They obviously have to be told not to steal, and if you are

going to take from people you compensate them. And, most people are considerate of others and do not want special treatment and do not want to butt in line and do not want to steal from people.

3. In the Appeals Court the issue arose that when courts have been corrupted for political purposes, that is when politicians and a political party (i.e. the Democratic Party) choose judges to protect their stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes, which is also a conspiracy to rig court cases and a conspiracy to protect the actions and protect election rigging and subvert the Constitution, and even though the judges may be too unsophisticated or too dumb or both to understand that they are actually pawns being used by politicians (which is their problem), and judges have been bought (person is given government job (judgeship), payback is person protects politicians by rigging cases), and judgeships are being sold to special interest groups for votes and contributions, whether those judges should be disqualified under 28 U.S.C. § 455 (a) from cases involving the actions that they were given the judgeship to protect, or in other words do judges work for the people or politicians and a political party and can politicians choose judges to

protect their election rigging, etc.?

In the Appeals Court the Appellant submitted a Motion To Disqualify Democratic Party Appointed Judges with the main point being that the Democratic Party tries to stack the courts with judge pals that will protect the actions in this case (promising government jobs and contracts and steal from Asians, Mid-Eastern, Whites and men) and their stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes. There were also many other points showing quotes to support the point. One such point is:

10. Barry Ceminchuk has many quotes from candidate speeches and from books and news stories, some of which are:

> A. The book "All Too Human a Political Education", by George Stephanopoulos, third paragraph on page 170, says:
>
> "Ginsburg will get confirmed. She'll be a reliable liberal vote.".
>
> A "reliable liberal vote" means adhere

> to the doctrine and protect and push the agenda, which she does, she is a preference monger.

The points in the Motion are not disputed and therefore the courts have been corrupted for political and election rigging purposes. Courts are to be fair and impartial and not tainted by political manipulation.

This is a political party and politicians stacking the courts with judges to protect the actions in this case. This is also political party and politicians conspiring to rig court cases and choosing the judges in their cause. Politicians cannot be allowed to stack the courts with judges that will rig court cases to protect their election rigging, etc. and such judges should be disqualified from cases which they were chosen to protect if the guarantee of due process is to be adequately implemented. This is very simple and very basic to the Plaintiff.

Republicans seem to try to appoint honest judges, Democrats choose judges that will protect these actions and surreptitiously push an ideology. That many of the Democrat judges are too

unsophisticated or too dumb or both to understand they are pawns is their problem, some corrupt politicians look for malleable dumb people or zealots. It is the modus operandi of corrupt politicians to try to use the courts to protect their corruption and to legitimize their corruption, and to hide behind while they steal and rig elections.

All judges take an oath to uphold the Constitution and apply the law impartially, they work for the people, not a political party. And judges are to think of the integrity of the judicial process.

What should happen here is as in the *Supreme Court case, Caperton Et Al. v. A. T. Massey Coal Co., Inc., Et Al., 556 U.S. ____ (2009), decided June 8, 2009,* from the Syllabus, page 1 of the pdf document, which says:

"Held: In all the circumstances of this case, due process requires recusal."

There are many points made in the Appellant/Plaintiff's submissions to the Court of Appeals, including some blunt words, following are some quotes:

- As 28 United States Code (U.S.C.), Section 455 says: "(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.", non-disputed points of courts being stacked with judges that will protect the actions in the case clearly raises the question of impartiality.

- The [Appeals] court said "Appellant has not demonstrated that the court's impartiality might reasonably be questioned. See 28 U.S.C. § 455.", I am a reasonable person and I think only a moron or a bought off judge would think that is acceptable to stack the courts with lackey judges who will protect election rigging, criminal code violations, corruption, money funnelling, kickbacks, and stealing, and selling judgeships to protect such (person gets judgeship (sell), judge blocks cases (payback) and again, "That many involved are too unsophisticated or dumb or both to realize this is their problem.").

- As I said "non-disputed points of courts being stacked with judges that will protect the actions in the case clearly raises the question of impartiality." I

ask is there actually someone who is so dumb that they dispute that? Really? What, I can set up a political party and stack the courts with judges that protect my election rigging? Have you not thought what that means, like, and for the simpletons this is an example only, someone could use violence against opponents and have judge pals protect them? Knock it off this looks dumb.

- I gather the evidence to show the courts are being stacked to protect election rigging, stealing, money funnelling and kickbacks, and the Appellee has not disputed such, and some judges are actually trying to protect the corruption of the courts. This is dumb. Everyone is entitled to honest and fair and smart judges if the guarantee of due process is to be adequately implemented. As I said, any judge who does not understand that or who is trying to ignore it should resign immediately (again back to either too dumb or blocking). And, judges are not to be used by corrupt politicians to hide behind.

- Therefore the Motion to Disqualify Judges should be granted. It should also be extended to include any lackey, in-the-pocket judge who wants to rig a case and protect corrupt, election rigging

politicians and the stealing, money funnelling and kickbacks.

- Besides, there should not be a problem here. If the Democrat judges are honest they would not mind that honest judges handle the case, and if the Democrat judges want to rig the case they make my point and should be disqualified.

Further points:

- Although I have not researched the topic I mention honest services and thereby depriving the public of honest adjudication services.

- Judicial conduct.

- The risk here is that that politicians will see the courts as pawns to be used to protect their corruption and election rigging and money funnelling, etc. and anything goes. And, the public will see the courts as a joke and lackey flunkeys of politicians.

- From *Bulloch v. United States (763 F.2d 1115, 1121)* the court stated "Fraud upon the court is

fraud which is directed to the judicial machinery itself ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted."

4. If these actions are going to continue, then government jobs and contracts are political pawns and all political parties are to have access to them, will the court order that the Plaintiff get the same benefits (half the race and gender set-asides and a payment for Goodwill, $100 Million), for the political party he will start?

From the Complaint:

3. If these actions are not going to be stopped then the Plaintiff requests that the government make government jobs and contracts available for the Plaintiff so he can set up a political party and get the same benefits (government jobs and contracts for support, votes and contributions). Half the race and gender set-asides and a payment for Goodwill for past benefits, $100 Million (which is low considering the large $ involved, the Plaintiff's unofficial

information is that set-asides are in the ten's of Billions per year).

As some may not know, Goodwill is an accounting term for the value of a brand or name, like "Democratic Party", the name has a value that has been increased due to election rigging actions.

And judges are to think of other political parties and the integrity of the electoral process and the Freedom of Association for political parties.

As part of the scheme is to appoint people to the Justice Department to promote preferences (payback for the ethnic and feminist special interest groups), positions in the Justice Department should also be added. The Plaintiff also points out that politicians who think they are smart by appointing people to push an agenda that includes crimes, are conspiring for a crime by a third person, "Plainly a person may conspire for the commission of a crime by a third person." *(Salinas v. U.S. 118 S.Ct. 469, 477)*. The Plaintiff also points out that attorneys can be charged as Principals (18 U.S.C. Section 2).

5. When is this court going to wake up and

realize what is really going on, that corrupt politicians and thieves are trying to use the courts to protect their corruption, etc. and to legitimize their corruption, and to hide behind while they steal and rig elections?

The Plaintiff points out that there is a silly game being played by the corrupt politicians and the steal from Asian, Mid-Eastern and White people and men crowd. They continuously steal and hide behind government lawyers and judges and keep looking for judges to legitimize their corruption and stealing. While stacking the courts to protect the actions.

And they keep trying to change their story, over the years, the steal from Asian, Mid-Eastern, Whites and men crowd have tried twisting the civil rights laws, role models, societal discrimination, balancing, race and gender norming, soft quotas, goals, no preferences, diversity, and many other games. Apparently the latest scheme, and the Petitioner has not researched this extensively, is to try to coerce preferences with disparate impact lawsuits trying to remove job requirements (like strength) to lower standards (which they are not supposed to do), ignoring the recent Supreme Court Ricci case, and if

required then ok, and 42 U.S.C. Section 2000e-2(j) Preferential treatment not to be granted on account of existing number or percentage imbalance, and no adjusting tests, and what is supposed to be MERIT. This is just their latest proportionality and balancing game and trying to twist the civil right laws that they have been trying for years whenever the Democrats are in office (they appoint people to promote preferences). And, they then take the lowered standard, minimal standard people, passing over better qualified white males and others.

This is absurd and even more absurd is that no one seems to have realized this. It is just a game by the corrupt and the thieves trying to steal from people and promote preferences. And these are really an election rigging, etc. scheme.

6. For the preference mongers on this court (i.e. those who want to steal from Asian, Mid-Eastern and White people and men, and those who say discrimination is bad then want to discriminate against people, and those who want to race and gender "norm" (adjust scores to pass over people and give jobs to lowered standard people)), will you give up your job, or are you like the silly, useless people

who want to steal but do not want it done to you, or worse, too dumb to think that far?

This is only for the judges discussed, there are some smart honest judges on this court. This is absurd, you preference mongers have to be told vehemently not to steal from people and not to promote such. What, you steal from people and not compensate them? What are you, some steal from decent hardworking people thief? Or is this is too complicated a thought for you?

You obviously think it is acceptable to displace me and people like me from jobs and steal our business, and that I do not matter. How dare you, who do you people think you are? Obviously a responsible adult has to straighten you out.

When I was young people like you were laughed at and ostracized, and in business we fire people like you. You are preference mongers, do not try your self-deluding game of trying to divert the issue, you are the people that support preferences, there have been many cases that show you are for preferences. You might try to trick yourself into believing you are not, but your actions indicate otherwise, there is

always some drivel. Also, any one that thinks the Constitution says steal from Asian, Mid-Eastern, White people and men is at the least silly.

And, you are the same as those that want to discriminate against African-Americans, Jews, Irish, etc. You just seem to think (although I doubt you can think this far) that it is acceptable to discriminate and displace people as long as it is against Whites, or men, or Asians, or Mid-Eastern people. Discrimination is bad unless you promote it. And, you are actually worse, you are supposed to know better.

And, you are propagating and exacerbating racial hatred, "To pursue the concept of racial entitlement - even for the most admirable and benign of purposes - is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred." *(Adarand Constructors, Inc. v. Pena 115 S.Ct. 2097, 2119 (1995)).* Also "can only exacerbate rather than reduce racial prejudice", *page 2113.*

And, you should give up your job. Or, are you those who want something done to some one else but

do not want it done to you? I have noticed people like you do not want to give up your job.

And when you resign say the Petitioner, Barry Ceminchuk can have your job, a Supreme Court appointment, to use to get votes and kickbacks and to protect his stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes. We will then see how you like your job being used as a political pawn for votes and kickbacks. What, oh, you did not think of that?

And, the most important point is that Justice Alito's "pretext" point in the Ricci case is correct. And, you do not seem to understand that these preferences are actually an election rigging scam. And, you do not seem to have the knowledge that politicians are not to promise jobs or contracts to special interest groups for support (i.e. votes) and kickbacks (i.e. contributions), this is Bribery and election rigging, there are election rigging rules and crimes (18 U.S.C. Section 600 and other sections). You should know this, it is not politics as usual.

And, you do not seem to realize you are being used as pawns to protect the election rigging

schemes. That you are too unsophisticated or too dumb to understand this is your problem. Anyone that does not understand that there are sleazy politicians and political consultants that will sell anything and cheat in any way to get elected is simply, at best naïve and at worst dumb.

7. Is Barry Ceminchuk (i.e. the Plaintiff) going to continue to be defrauded by paying court filing fees expecting a fair trial, and barred from court by judge pals rigging court cases to protect stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes of politicians, which is the courts effectively barring the Plaintiff from court (blocked cases by ignoring precedents and issues with standing is the same as barring)?

As my case is being rigged I have not been treated fairly, and having paid the court filing fees I have not received what was promised, a fair trial. This is fraud. Another thought that seems to be too much for the preference mongers.

And, my case being rigged to block the case is the same as barring me from the court process, but it is being done is a sneaky way with a false issue. If

the courts are going to bar me from the court process then have the guts to say it, I am tired of spending time and money on a rigged game.

All of which leads to the question of whether mankind can govern themselves?

From the perspective of a systems analyst and the system of government, if politicians and the courts and the civil service are corrupt, anything goes and mankind cannot govern themselves.

FEDERAL JURISDICTION IN DISTRICT COURT

The jurisdiction of the District Court is based on 28 U.S.C. § 1343, 1346, et seq.

REASONS FOR GRANTING THE WRIT

THIS IS A QUESTION OF SUPREME IMPORTANCE AND THE COURT'S SUPERVISORY POWER IS REQUIRED

The reasons for allowance of the writ are the Courts have decided an important federal question in

a way that conflicts with relevant decisions of this Court by deliberately ignoring on-point precedents and other standing issues (pointed out many times) to protect politicians and rig an election rigging, stealing, corruption, Bribery, money funnelling and kickback case.

This case presents questions of supreme importance in that the issues involved are serious, big time issues, involving stealing, corruption, election rigging, Bribery, money funnelling and kickback schemes and whether victims are compensated and judges being chosen to protect such actions and judges protecting politicians. If the courts protect politician's corruption, election rigging, etc. then the courts are lackeys of politicians and political operatives and sleazy politicians will see the courts as pawns to be used to protect their corruption and election rigging and money funnelling, etc. and anything goes (which could inevitably lead to intimidation of opponents and possibly violence). And, the public will see the courts as a joke and lackey flunkeys of politicians. Also, to allow these actions to continue is to encourage corrupt politicians and their political operatives to run their schemes, and the steal from Asian, Mid-

Eastern and White people and men crowd to keep playing their games to steal.

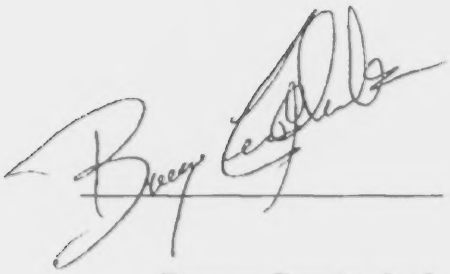
CONCLUSION

The Petitioner urges this Court to grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit. Serious, big time issues.

Or, in the alternative summarily reverse this case and refer it to an honest judge who has not been corrupted by political manipulation (which is such a basic principle it should not have to be said), and a judge who understands the rule of law. Or, as in the case Ricci Et Al. V. Destefano Et Al., Supreme Court, No. 07-1428, June 29, 2009, grant summary judgment in the Petitioner's favor ("Petitioners are entitled to summary judgment on their Title VII claim" page 34 end of Opinion of the Court, page 38 of pdf document).

Dated July 1, 2010.

Respectfully submitted,



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APPENDIX

TABLE OF CONTENTS OF APPENDIX

The Court Orders 1

Appeal Court Mandate 1

Appeals Court Rehearing 5

Appeals Court Order 7

District Court Order 10

Constitutional Provisions and Statutes . . 18

Statutes Involved 19

COURT ORDERS

COURT OF APPEALS MANDATE

Same as Appeals Court ORDER, with two stamps on the first page, one saying "MANDATE" and one saying "A true copy" and signed by the Deputy Clerk.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5262 **September Term 2009**
1:08-cv-01742-EGS
Filed On: December 3, 2009

Barry Ceminchuk,
Appellant
v.
Barack Obama,
President of the United States,
Appellee

BEFORE: Sentelle, Chief Judge, and Garland and Brown, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the response thereto, and the reply; the motion to disqualify judges, the response thereto, the reply, and the motion for leave to file a surreply; and the motion to dispense with the appendix, it is

ORDERED that the motion to disqualify judges be denied. Appellant has not demonstrated that the court's impartiality might reasonably be questioned. See 28 U.S.C. § 455. It is

FURTHER ORDERED that the motion for leave to file a surreply be denied. It is

FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court properly dismissed this action for lack of standing, because appellant did not allege an injury in fact caused by the appellee's conduct and redressable by the court, which are the "irreducible constitutional minimum" requirements for standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61

(1992). Appellant refers only generally to government jobs and contracts and to his experience with Information Technology and preparing bids for contracts. The district court also properly denied appellant's motion to strike the appellee's motion to dismiss, because appellant did not perfect service on the United States until December 15, 2008, and therefore the motion

to dismiss was timely filed. See Fed. R. Civ. P. 4(i). It is

FURTHER ORDERED that the motion to dispense with the appendix be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

COURT OF APPEALS REHEARING

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Filed On: December 3, 2009

Barry Ceminchuk,
Appellant
v.
Barack Obama,
President of the United States,
Appellee

BEFORE: Sentelle, Chief Judge, and Garland and Brown, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, it is **ORDERED** that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

COURT OF APPEALS ORDER

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5262 **September Term 2009**

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Per Curiam

DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BARRY CEMINCHUK,	)	
Plaintiff,	)	Civil Action
v.	)	No. 08-1742(EGS)
BARACK H. OBAMA,[1]	)	
Defendant.	)	
	)	

MEMORANDUM AND DISMISSAL ORDER

Plaintiff Barry Ceminchuk, proceeding pro se, brings this action against the President of the United States in his official capacity. Plaintiff, a resident of Canada, alleges that he and a class of similarly situated individuals have been harmed by the affirmative action policies of the United States. He

[1] The Complaint, filed on October 10, 2008, named as defendant George W. Bush in his official

seeks an injunction barring affirmative action policies, or, in the alternative, requiring defendant to make "government jobs and contracts available for" plaintiff. In addition, plaintiff seeks damages consisting of "half the race and gender set-asides" and a $100 million settlement for "past benefits."

Since 1997, plaintiff has filed ten actions in this Court seeking damages and injunctive relief relating to the alleged harm he has suffered as a result of U.S. affirmative action policies. Plaintiff has filed these actions against numerous defendants including, inter alia, the Secretary of Defense, Chief Justice William Rehnquist, President George W. Bush, and the Attorney General of the United States. All of the previous cases brought by plaintiff have been dismissed "because plaintiff failed to state a claim upon which relief can be granted, failed to allege standing to bring such an action or failed to provide 'a short and plain statement of the claim showing that the pleader is entitled to relief' in violation of Rule 8(a) of the Federal Rules of Civil Procedure." Ceminchuk v. Attorney Gen. Of the

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capacity as the President of the United States. Barack H. Obama was sworn in as President on January 20, 2009, and is therefore substituted as named defendant pursuant to Federal Rule of Civil Procedure 25(d).

United States, Civ. No. 02-0229, Mem. & Dismissal Order at 1 (D.D.C. Feb. 6, 2002). Many of the complaints filed in this Court, including the most recent three cases, have been dismissed with prejudice. See id. at 3; Ceminchuk v. Sec'y of Def., Civ. No. 01-2258, Mem. & Dismissal Order at 2 (D.D.C. Oct. 30, 2001); Ceminchuk v. Sec'y of Def., Civ. No. 01-1587, Mem. & Dismissal Order at 3 (D.D.C. July 23, 2001).

Plaintiff's complaint, filed on October 10, 2008, makes substantially the same allegations as plaintiff has made in prior cases before this Court. On December 29, 2008, the Clerk of the Court filed a Return of Service of Plaintiff's Complaint and Summons. Defendant filed a Notice of Correction of Date of Service of Summons and Complaint on January 5, 2009, stating that the complaint was properly served on December 15, 2009, not on November 6, 2008 as contended by plaintiff. On February 11, 2009, defendant filed a motion to dismiss plaintiff's complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). In addition to filing a substantive response to defendant's motion to dismiss, plaintiff has filed three motions of his own: (1) a motion to certify a class pursuant Federal Rule of Civil Procedure 23; (2) a motion to strike defendant's motion to dismiss; and

(3) a motion for leave to file a surreply to defendant's motion to dismiss. All of the motions are now ripe for decision by this Court.

Plaintiff moves to strike defendant's motion to dismiss on the basis that it was untimely filed. He argues that defendant received plaintiff's complaint on November 6, 2008, and defendant was therefore required to answer or otherwise respond to the complaint by January 5, 2009. Pl.'s Mot. Strike Def.'s Mot. Dismiss at 1. The record, however, makes clear that defendant informed both plaintiff and this Court that the complaint was not properly served on November 6, 2008, because the initial documents received by the U.S. Attorney of the District of Columbia's civil process clerk lacked an appropriate summons. See Notice of Correction of Date of Service of Summons & Compl. (filed Jan. 5, 2009). Defendant's notice is sufficient to demonstrate that February 13, 2009, not January 5, 2009, was the due date for defendant's answer to the complaint. See Guthery v. United States, 507 F. Supp. 2d 111, 115 (D.D.C. 2007) (holding that the plaintiff's service of process was deficient "because he does not appear to have complied with the requirement in [Federal] Rule [of Civil Procedure] 4(i)(1)(A) by having a copy of the summons and complaint mailed via certified or registered mail to the 'civil process clerk' at the U.S.

Attorney's Office"). Plaintiff's motion to strike is therefore denied.

Turning to defendant's motion to dismiss, the Court agrees with defendant that plaintiff has failed to allege an injury in fact sufficient to confer standing. To satisfy the case or controversy requirement under Article III, a plaintiff must show that (1) he has suffered a concrete and particularized injury that is actual or imminent not merely conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) the injury is redressable by a favorable decision of this Court. See, e.g., Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Plaintiff's "nebulous allegations of hypothetical injuries based on federal policies" fail to meet this standard. Def.'s Mot. at 8; see, e.g., Lujan, 504 U.S. at 574 (reiterating the well established principle that "to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action" (internal quotation marks omitted)); J. Roderick MacArthur Found. v. FBI, 102 F. 3d 600, 606 (D.C. Cir. 1996) ("It is not enough for the [plaintiff] to assert that [he] might suffer an injury in the future, or even that

[he] is likely to suffer an injury at some unknown future time. Such 'someday' injuries are insufficient." (citing Lujan, 504 U.S. at 564)); see also Paige v. Palm, 161 F. Supp. 2d 26, 29 (D.D.C. 2001) (holding that a pro se plaintiff's complaint detailing "general dissatisfaction with the validity of regulations" was insufficient to establish standing). Indeed, the injury alleged in plaintiff's present complaint is even more generalized than plaintiff's previous complaints that have been dismissed for lack of standing. Compare Compl. at 4-6, with Ceminchuk v. Attorney Gen. of the United States, Civ. No. 02-0229 (D.D.C. Feb. 6, 2002).

Plaintiff's complaint is therefore dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.[2] And because plaintiff

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[2] On March 10 2009, plaintiff filed a motion to file plaintiff's response to defendant's reply in support of defendant's motion to dismiss plaintiff's complaint and opposition to plaintiff's motion to strike. This Court granted in part and denied in part the motion, explaining that "any arguments made in response to defendant's reply in support of its motion to dismiss" would be disregarded because plaintiff had neither sought leave to file a surreply nor shown that the filing of a surreply was appropriate under the circumstances. See Minute Order

has been repeatedly advised that his failure to comply with Federal Rule of Procedure 8(a) may result in dismissal with prejudice, see, e.g., Ceminchuk v. Sec'y of Def., 01-1587, Mem. & Dismissal Order (July 23, 2001), this action will be dismissed with prejudice. See Brown v. Califano, 75 F.R.D. 497, 499 (D.D.C. 1977). Finally, the Court notes that plaintiff has been "advised that further repetitive filings [of the nature presented in his complaint] may result in the Court's entry of an injunction against further filings." Ceminchuk v. Attorney Gen. of the United States, Civ. No. 02-0229, Mem. & Dismissal Order at 3 (D.D.C. Feb. 6, 2002) (citing In re Powell, 851 F.2d 427, 431 (D.C. Cir. 1988)). The Court declines to enter such an injunction at this time. Nevertheless, plaintiff is undoubtedly on notice by this time that the Court will not tolerate further filings of this nature.

For the foregoing reasons, it is by the Court

ORDERED that plaintiff's motion to strike and motion for leave to file a surreply are **DENIED**; and

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(Mar. 17, 2009). Plaintiff then filed a motion for leave to file a surreply, contending that defendant had raised new arguments in its reply to the motion to dismiss. The Court rejects this argument and, for that reason, denies plaintiff leave to file a surreply. See

it is

FURTHER ORDERED that defendant's motion to dismiss is **GRANTED**; and it is

FURTHER ORDERED that plaintiff's motion to certify is **DENIED**

AS MOOT; and it is

FURTHER ORDERED that plaintiff's complaint is **DISMISSED** with prejudice. This is a final appealable order. See Fed. R. App. P. 4(a)(1).

SO ORDERED.

Signed: **Emmet G. Sullivan**
United States District Judge
July 17, 2009

Lewis v. Rumsfeld, 154 F. Supp. 2d 56, 60 (D.D.C. 2001) ("The standard for granting a leave to file a surreply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party's reply."). Moreover, the Court notes that even if leave were granted, none of the arguments presented by plaintiff in his surreply would affect the analysis presented above.

CONSTITUTIONAL PROVISIONS

Articles of Confederation, Article XI. Canada, asceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of the Union. And Article IV, Section 1 ... shall be entitled to all privileges and immunities, ... and shall enjoy therein all the privileges of trade and commerce. The RICO statutes (18 U.S.C. Section 1961 et seq.) mention "interstate or foreign commerce" (18 U.S.C. Section 1962). So either the Articles of Confederation and/or the RICO statutes are applicable.

There are many bribery and corruption statutes (see below), Article II, Section IV, The President, Vice President and all civil Officers of the United States, shall be removed from office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article VI, The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial Officers, both of the United Sates and of the several States, shall be bound by Oath or Affirmation, to support

this Constitution;

Northwest Ordinance (AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES NORTHWEST OF THE RIVER OHIO): Section 14. It is hereby ordained and declared, by the authority foresaid, that the following articles shall be considered as articles of compact, between the original States and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

Article II. The inhabitants of said territory shall always be entitled to ... And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or to have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud previously formed.

STATUTES INVOLVED

From the Complaint: p.5. This is brought pursuant to 42 U.S.C. Section 1985 (3) (Depriving persons of rights or privileges) and/or many other laws

including Sections 1986, 1983, 18 U.S.C Section 1961 et seq., Bivens, the Fifth (just compensation) and Fourteenth Amendments and Bribery of the Constitution, 42 U.S.C. Sections 1981 through 2000e-16. Also Sections 320 and 101 of the 1991 Civil Rights Act (Prohibition against racial discrimination in the making and enforcement of contracts), and 18 U.S.C. Sections 2, 201, 210, 211, 241, 242 and 595 through 610. Also contempt is an issue, 42 U.S.C. Section 1995. Sections especially applicable are:

18 United States Code, Section 2. Principals.
(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 United States Code, Elections Chapter, Section 599. Promise of appointment by candidate
Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or

employment, for the purpose of procuring support in his candidacy shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

18 United States Code, Elections Chapter, Section 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined under this title or imprisoned not more than one year, or both.

18 United States Code Section 1961 et seq. (RICO):

Section 1961 includes "bribery" and, as explained in Salinas v. United States (118 S.Ct. 469) on page 476, "any act ... involving bribery which is chargeable under state law ...". An example of a state law would be the California Election law (see below).

Section 1962 mentions "interstate or foreign commerce".

28 U.S.C. § 455 (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned ...

42 United States Code, Section 1987 Prosecution of violation of certain laws.
The United States attorneys, marshals, and deputy marshals, the United States magistrate judges appointed by the district and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of section 1990 of this title or of sections 5506 to 5516 and 5518 to 5532 of the Revised

Statutes, and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense.

The notes in the USCS L.Ed books to 42 U.S.C. Section 1987 point to Section 600 and other sections of the criminal code.

42 United States Code, Section 2000e-2(j), Preferential treatment not to be granted on account of existing number or percentage imbalance. Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or

employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

California Election law, Section 18520 which says:

18520. A person shall not directly or through another person give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to:

(a) Refrain from voting.

(b) Vote for any particular person.

(c) Refrain from voting for any particular person.

A violation of any of the provisions of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

18 U.S.C. Section 210. Offer to procure appointive public office. Whoever pays or offers or promises any

money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

18 U.S.C. Section 211. Acceptance or solicitation to obtain appointive public office. Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined under this title or imprisoned not more than one year, or both.

Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined under this title, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written

request of an executive department or agency of the United States.

18 U.S.C. Section 242. Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for

any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. Section 601. Deprivation of employment or other benefit for political contribution. (a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of (1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or (2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State; if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined under this title, or imprisoned not more than one year, or both.

(b) As used in this section -

(1) the term "candidate" means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual

is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term "election" means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

42 U.S.C. Section 1985. Conspiracy to interfere with civil rights (2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory

conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the

conspirators.

42 U.S.C. Section 1988. Proceedings in vindication of civil rights (a) Applicability of statutory and common law. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.